App. F. IX-4

193 (Law)

RECEIVED

File No. 134-37

Serial Nos. 1-3

Previous References

Law 82-37 Sl 1-9

Letter References

Law 59-40 (1-2)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 3

(54)

Part B for May 1938.

SUBJECT.

Civil Revision petitions Nos 222 & 223 of 37-38 on the file of the High Court (Cases relating to Messrs K. T. Bhashyam Iyengar & Thiruvenkatachary)

Sl 3 To the D & D - Police

D. No P 6177 & 5-5-38
& Mis. Dis. P 6178-85-38

WD 0295—GPB—22,500—18-8-37

Issues instructions to denote that an attack against the Dewan is an attack against Govt. amounts to sedition.

Miller 25-5-38

4754
P

CONFIDENTIAL.

In reply please refer to
No. 605

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 11th February *1938.*

Recd 11.2.38

1) For perusal in the first instance
Will be worked out soon afterwards
This Dy Secy
First Member
3)
2)

From

Mirle N. Lakshminarangappa, Esq., B.A., LL.B.,
Government Advocate in Mysore,
BANGALORE.

Law 134-37-1

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

Sir,

I have the honor to state that Criminal Revision Petitions Nos. 222 and 223 of 1937-38 on the file of the High Court of Mysore (Petitions filed by the Secretary of the Bangalore Law Association in the cases relating to Messrs. K.T. Bhashyam Iyengar and Thimma Reddy respectively) were ~~heard and~~ disposed of by the High Court, the one relating to Bhashyam Iyengar on the 8th instant and the other relating to Mr. Thimma Reddy on the 9th instant. The former petition was dismissed and the latter petition allowed. Copies of the orders are applied for and will be sent soon after they are ~~obtained~~ obtained.

The order of sanction for prosecution in the latter case covered two speeches made by the accused at Dodballapur, one on the 7th October 1937 and the other on the 12th of the same month. The cases were split up, one complaint was filed regarding the speech of the 7th and the other regarding the speech of the 12th. The case regarding the 7th was proceeded with while that relating to the 12th was adjourned sine die awaiting the result of the earlier case.

In my humble opinion the procedure adopted was inexpedient and in the light of the event which subsequently happened

happened one can say it was not good. Section 234 of the Code of Criminal Procedure allows three charges to be combined in one and the same trial, provided they are committed in the course of one year and relate to cognate matters. Both these requisites were present in this instance. Indeed, the order of sanction - covered both the speeches and there was no need to file two complaints and duplicate trials, trials especially of political importance which will necessarily entail a serious strain on the maintenance of public peace and tranquillity, besides unnecessarily occupying valuable public time and money. Secondly, even if it was - thought, that for any reason, as, e.g., the speech of the 12th was not taken by a Stenographer but only taken in longhand, a reason which in my opinion is not good - because there are heaps of trials where the prosecution succeeded on the strength of longhand transcript - there was no reason to prefer proceeding with the speech of the 7th earlier than that of the 12th. Indeed, there was an observation from the Bench of the High Court which heard the case asking me why this kind of procedure and preference was made. I could not give any reason at all which in my opinion would be satisfactory.

The speech of the 12th October was beyond doubt seditious. It attacked every body from the highest to the lowest including members of the Royal Family, the Dewan, the Private Secretary to His Highness, and Office of the Government. In fact the patches which were - innocuous were very few and far between, and a convictio could easily have been sustained in the High Court - without any effort whatever whereas in the speech of the

7th

7th except in one passage where there was a very bad reference to the Dewan there was nothing else that could be seriously objected to.

I should like to refer to one other point in this connection.

I find from many of the speeches that are being delivered especially in the moffussil attacks against the Dewan are frequently made and therefore as a matter of public importance I raised a point in the High Court, the point namely that according to the Statute Law in Mysore an attack against the Dewan was an attack against the Government. The reasoning was somewhat on the following lines. Section 3 of the General Clauses Act operates on every special enactment wherever there is nothing in the special enactment repugnant to it. In the Indian Penal Code as in force in Mysore. Section 17 defines "Government" as "the person or persons authorised by law to administer executive Government in any part of British India". There is no definition of the Government of Mysore in the said Indian (Mysore) Penal Code. Therefore the definition of the word "Government" in Section 3 Sub Sec.16 of the General Clauses Act operates. In that clause the Government is defined as "the person authorised to administer executive Government in Mysore" and that person is undoubtedly the Dewan. Therefore, it follows that so far as this particular point is concerned an attack against the Dewan which in other circumstances might have amounted to nothing more than defamation of any ordinary person an offence punishable under Section 500 I.P.C., really amounts to Sedition under Section 124A of the Indian Penal Code as in force in Mysore.

The Bench

The Bench noticed this point briefly, but did not feel called upon to pursue it further, as in their opinion the statement regarding the Dewan in Mr. Thimma Reddy's speech of the 7th October 1937 was so grotesquely absurd that no member of the audience could take it seriously and therefore no disaffection or contempt could have been felt by the audience. It was on the strength of this view of the statement that the accused was acquitted.

If this reasoning should be acceptable to the Government then I think attention of the persons who may be entrusted with the work of conducting the prosecution for sedition, where the attack may be against the Dewan may kindly be drawn if the Government should be pleased to deem it expedient to do so.

I have the honor to be,
Your most obedient servant,

Government Advocate.

CSN/11.2.38

No. 4754 Cr Rev. Petitions Nos 222 and 223/37-38
(Cases relating to K.T. Bhashyam and Thimma Reddy)
High Court (S—

General and Revenue Secretariat

File No. Laws of 193 . [App. F. III—2

Serial No.

Refce para 1

4) The Govt Advocate says that he has applied for the copies of the orders passed in the above cases and that they will be sent as soon as received. The same may perhaps be awaited.

Submitted.

5) Yes

15/2

15/2

Sec A
15-2-38

From

The Govt Advocate

Letter No 626, dated 22nd Feb: '38.

Forwards for the information of Govt a copies of the judgments passed in Civil Revision Petitions Nos 222 and 223/37-38 on the file of the High Court of Mysore (Cases relating to Messrs K.T. Bhashyam and Thimma Reddy respectively.)

6) The copies of judgment are submitted for perusal with reference to para 1

27/2 to P.W.D

7) Kind reference is invited

8) Beg to submit that it was our wrong that two separate Complaints were files in respect of two

NOTE—Contn. Sheet.

WD 0284—GPB—30,000—13-9-37

Speeches delivered by the accused on different days: but it was open to have the two cases clubbed and tried together.

9) I agree with the Govt Advocate, that when the idea was to proceed with one of the cases only, prudence required that the stronger of the two cases should have been selected for the purpose. It was a mistake that the weaker case was first proceeded with.

10) Lastly, the Government Advocate raises a question of importance and says he is of opinion that according to Statute law in Mysore, an attack against the Diwan is an attack against Government and therefore amounts to Sedition under Section 124A of the Indian Penal Code. I entirely agree with that opinion and would wish to make a few observations. The G.A. says that there is no definition of "Govt of Mysore" in the Penal Code and therefore the definition of the word Government in the General

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Serial No.

clauses Act operates. It seems to me that this observation is not quite correct. It is no doubt true that Section 17 of the I.P.C. defines the word 'Government' as denoting the person or persons authorised by law to administer executive Govt in any part of British India. But Section 1 (2) of Act I of 1904 provides that 'subject to the provisions of that Act, the rule of interpretation contained in Section 31 of the General Clauses Act 1899, shall apply to the Indian Penal Code as in force in Burma as if the said Code had been expressed to be applied to the whole of Burma. According to rule of interpretation contained in Section 31 (iv) of the General clauses Act, the references to territorial limits in British India (in the I.P.C) have to be converted into references to Burma or a part thereof as may be denoted by the context. The cumulative effect of these provisions would be that according to Section 17 of the I.P.C. as applied to Burma, the word 'Government' denotes the person authorised

NOTE—Contn. Sheet.

WD 0284—GPB—30,000—13-8-37

Observations made by the Govt. Advocate regarding prosecution for Sedition. 16 4989

Law File No. of 193 General and Revenue Secretariat

by law to administer executive Government in Mysore'. The definition of the word Government, as given in Sec. 3 (16) of the General Clauses Act is that 'Govt shall mean the person authorised to administer executive Government in Mysore' and that person is undoubtedly the Dewan. In this connection I may also invite attention to the proclamation by His H. H. the late Sir Chamarajendra Wodeyar Bahadur on 25-3-81, wherein it was announced that 'for the Conduct of the executive administration of the said Territories under our Commands and Control, we have resolved to appoint a Dewan'. It is thus quite clear that the Dewan is the person entrusted to administer executive Government in Mysore. and Consequently an attack against the Dewan would amount to an attack against Govt within the meaning of Sec. 124 A I.P.C

BKA
31.3.38

L.S.G. Secy

GENERAL SEC.
2 APR 1938
5788

438) Observations made by the Govt Advocate 9
Regarding prosecution for Sedition

General and Revenue Secretariat | Law File No. 134 of 1937 | [App. F. III—2

Serial No.

DEWAN'S OFFICE
29 APR. 1938
No. 7425

11) The defects in the prosecution's case were brought out to the G.P.

12) The legal opinion that an attack against the Dewan is an attack against the Govt was also communicated to the G.P. for information & guidance

7241/1214

12.4.38

I Member)

BKR 12.4

1/12 14/4

Draft BKR 14.4

Subd. with a draft for approval.

GENERAL SECRETARY
26 APR. 1938
6744

22/4

Gen. Secy) 27/4

BKR 26.4

BKR 27.4

OFFICE OF THE FIRST MEMBER OF COUNCIL
APR 30 1938
No.

First Member)

29/4

Dewan)

29-4-38

30/4 Secy

BKR 30/4

Note—Contn. Sheet.

B 5-5-38

WD 0284—GPB—30,000—3.37

To the D.G.P. Police in attached L.D.O. No. P. 6177, dt 5-5-38
(Copies to Dist. Heads)

6457/6177 10

D.O.No. C.C.87/37-38.

BANGALORE

6th May, 1938.

F. A. HAMILTON, Esq., C.I.E.,
pector-General of Police
in Mysore.

GENERAL SECRETARY
7 MAY 1938

Dear Mr. Venkatesa Iyengar,

With reference to your D.O.letter No.P.6177/Law. 34-37-3, dated the 5th May 1938, para 1, I like to inform you that I had no concern in the matter of selecting the particular case to proceed with in the Court against Mr.Thimma Reddi, though my impression was that both the cases could be pressed simultaneously in one and the same trial.

As regards para 2, I must refer you to the Government Advocate, who could have pressed these facts for consideration in the High Court at the time the arguments were advanced in the appeal against the conviction. I, however, state that the point expressed in the second para is quite clear to me and agree with Government in this respect.

Submitted for kind perusal

BMR
9.5

Yours sincerely,

B with the file
9-5-38

4989/37

In reply please refer to
No. 626

Pre-2

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangaloré, ...22nd....February.... *1938*

Law 134-37-2

GENERAL SECRETARY.
23 FEB. 1938

From

The Government Advocate
in Mysore, BANGALORE.

To

The General Secretary to the Govt.,
of H. H. The Maharaja of Mysore,
BANGALORE.

Sir,

In continuation of my letter No.605 dated the 11th February 1938, I have the honor to forward herewith for the information of Government, copies of the Judgments passed in Criminal Revision Petitions Nos.222 and 223 of 1937-38 on the file of the High Court of Mysore, (Petitions filed by the Secretary of the Bangalore Law Association in the cases relating to Messrs. K. T. Bhashyam Iyengar and N.C.Thimma Reddy, respectively).

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

CSN.

1415 2

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Tuesday, the 8th day of February 1938.

Present

SIR D'ARCY REILLY, CHIEF JUSTICE,

and

MR. JUSTICE C. ABDUL GHANI.

*****

Criminal Revision Petition No.222/1937-38.

Mr.M. P. Somasekhara Rao, Secretary,
Bangalore Law Association,
District Office Buildings,
Bangalore. .. PETITIONER.

(By Mr. L.S. Raju).

Vs.

The Government of Mysore .. .. OPPONENT.

(By the Government Advocate).

Criminal Revision Petition filed under Sections 435 and 439 of the Code of Criminal Procedure in accordance with the resolution passed on 9-12-1937 by the Law Association of Bangalore, is for setting aside the conviction and sentence under Section 124-A, Indian Penal Code passed on Mr. K.T. Bhashyam Iyengar accused in Criminal Case No.401 of 1937-38 on the file of the City Magistrate of Bangalore.

This petition coming on for hearing this day before a Bench (as ordered by ~~this Court~~ the admission Judge on 19-1-38), the Court ~~made~~ delivered the following:-

(3

Judgment.

~~O R D E R.~~

THE CHIEF JUSTICE :-

This case is an unusual one and in many ways an unpleasant one; and to me, and I expect to many others, it is a distressing case, because the Accused is an Advocate of considerable standing practising in this Court. He was convicted on the 8th of November last by the City Magistrate of Bangalore of committing an offence punishable under Section 124-A of the Penal Code and for that offence was sentenced to undergo rigorous imprisonment for 18 months and to pay a fine of Rs 1,000/- ~~fm~~ or in default to undergo further imprisonment for three months. Against that conviction and sentence he has not appealed. This case has come before us on a petition by a third party, whose most important allegation is that there is no evidence in the case that the Accused has committed the offence of which he has been convicted. That petition was admitted by my learned brother and posted before a Bench for hearing. Notice was issued to the Accused at a late date, because unfortunately the necessity of issuing notice to him had in the first instance been overlooked. If his reply to that notice had been that he wished to appear in this case and wished for time to instruct somebody, the hearing would of course have been adjourned.

But his reply was that he had not yet made up his mind whether he would like to appear before this Court or not, and the hearing could not properly be adjourned in those circumstances. So we have proceeded without him or any one representing him.

The learned Government Advocate took a preliminary objection that such a petition as this, preferred by a third party, when the accused concerned has not chosen to appeal, cannot be entertained as a revision petition. I do not think that is a tenable objection. It cannot be denied that under Section 439 of the Code of Criminal Procedure this Court has power to take up any case disposed of by a subordinate Court in revision, however the case is brought to its notice. A petition by a third party, when the accused himself after conviction has declined to appeal, though that has been possible for him, and has himself preferred no petition, is a very unusual way of bringing a case before this Court for revision; but it is quite a sufficient way to draw the attention of this Court to a case which may require revision or examination in order to see whether any revision is necessary or desirable. In the present case my learned brother as admission Judge has thought the allegations in the petition to be of sufficient importance to be considered after hearing arguments, and

that precludes any one else from raising any objection to such hearing. It does not matter really whether we class such a proceeding as this as an ordinary revision petition or treat it as a revision case, as it would be if a Judge of this Court had taken up the matter without being moved to do so by any one. The learned Government Advocate has also urged that, although no one can question the right of this Court to take up such a case in revision, the Petitioner has in the present circumstances no right to be heard, nor has any Counsel appearing for him. When this Court takes up a case, or when a single Judge of this Court takes up a case, for examination under revisional powers, that may be done without hearing anybody subject to the proviso that nothing can be done to the prejudice of the accused without giving him an opportunity of appearing. But, when a case is considered by a learned Judge of this Court to be of sufficient importance to be referred to a Bench for hearing, naturally the Judges forming the Bench would be anxious to have the case fully argued before them. In this case the allegation made by the Petitioner, i.e. the main allegation of the Petitioner, is an extremely grave one, viz. that the Accused has been convicted and sent to prison for something which he has done in the exercise of ordinary liberty of speech. Liberty of speech is of the very

greatest importance for the health and happiness of any society; and in such a case it would I think almost have been absurd for us to decline to avail ourselves of the assistance of the Petitioner's Counsel in investigating the allegations made by the Petitioner. The learned Government Advocate has suggested that, if we permit petitions like this to be brought by third parties unconnected with any case, we shall be opening a door for busy-bodies to waste the time of the Court. I do not think we need trouble ourselves about any such danger. The admission Judges of this Court are quite capable of protecting the Court from being troubled unnecessarily in that way.

The charge against the Accused, on which he has been convicted, is that 'on the 7th day of October 1937 at Doddballapur by means of spoken words, of which Exhibit P-2 is a substantially correct rendering in English, brought and attempted to bring into hatred or contempt and excited or attempted to excite disaffection towards His Highness the Maharaja of Mysore and towards the Government established by law in the territories of His Highness the Maharaja and thereby committed an offence punishable under Section 124-A of the Indian Penal Code.' To that charge was appended Exhibit P-2, an English translation of the speech, which the Accused was alleged to have made at Doddaballa-

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Dodballapur on the 7th of October in Kannada. Mr. Raju has suggested that there is some defect in that charge because the particular passages in the speech, which the prosecution alleged brought it within the provisions of Section 124-A of the Penal Code, were not specified. I do not think there is anything at all in that objection. The speech was not a very long one, and the report of the whole of it was appended to the charge. The Accused could not possibly have been misled by such a charge with such an appendix, and we are informed that not only the charge but Exhibit P-2, the report of the speech, was read out in Court to him. That Exhibit P-2 is a correct report of what the Accused said is the evidence given by P.W.2, a Shorthand Reporter, who has said that he translated what the Accused said in Kannada as he said it and wrote it down in shorthand in English in Exhibit P-3(a), which corresponds exactly with Exhibit P-2. The accuracy of that record of what the Accused said and the accuracy of the translation into English made by P.W.2 were never questioned by the Accused. The Accused cross-examined neither P.W.2 nor any of the other witnesses for the prosecution in the case. So we are not troubled by any question whether Exhibits P-2 and P-3(a) represent correctly what the Accused said. That is not in dis-

pute

dispute except in one matter. Mr. Raju, appearing for the Petitioner here, has brought to our notice that one reference to the Government as "mischief-mongers" in Exhibits P-2 and P-3(a) does not appear in Exhibits P-6, P-7 and P-8, which are notes in Kannada made by other prosecution witnesses, who were present when the Accused was making his speech. The Accused himself did not raise that objection to the reports in Exhibits P-2 and P-3(a); but for myself I am prepared to ignore that reference to the Government as mischief-mongers, if there can be any doubt about it.

When the prosecution evidence in the case had been completed, the Accused, who, as I have mentioned, did not cross-examine any of the witnesses, was ~~x~~ questioned by the Magistrate under Section 342 of the Code of Criminal Procedure. He declined to make any oral statement to the Magistrate but ~~xix~~ said he had a written statement, and that statement was accepted by the Magistrate. Moreover the Magistrate allowed the Accused to read that statement out. It started by saying that the Accused did not wish to plead nor to make any defence but that he stood by what he had stated, i.e. by what the prosecution evidence had proved that he had stated. He went on to say that what he had said did not come within the provisions of Section 124-A of the Penal

Code. Then his written statement, which is very long, launched out into an irrelevant political harangue, which the learned Magistrate should certainly not have allowed to be read in Court. Anything which the Accused wished to say in ~~xxx~~ answer to questions put to him under Section 342 of the Code of Criminal Procedure it was the duty of the Magistrate carefully to record and consider, provided the accused did not go off into wholly irrelevant matters; and under the provisions of Section 256 of the Code, if the Accused produced a written statement, as he did, it was the Magistrate's duty to file that with the records of the case. But there is no provision in the Code that merely because an accused person produces a long and irrelevant written statement he should be allowed to read it out in Court. The learned Government Advocate has explained to us that, when the Magistrate at first demurred to the Accused reading this statement, the Accused said that he would then make the statement orally and the Magistrate would have to write it down. Any statement which the Accused chose to make under Section 342 of the Code of Criminal Procedure the Magistrate would have to write down; but he would not have had to write down all the irrelevant stuff which is to be found in this written statement. The Accused, whose position I have mentioned, was well-aware of

the proper procedure of a criminal trial in a Magistrate's Court; and there is no doubt that in producing this written statement and reading it out with all its irrelevant contents, although he said he did not wish to defend himself, he was playing an impudent trick upon the Court, a trick of which a man in his position ought to have been ashamed.

I do not think at this stage I need say anything more about that statement except that in one part of it the Accused suggests, as I understand him, that there is no liberty of speech in Mysore. We know that over a very large part of the world to-day there is no liberty of speech. But that is not the case in Mysore. As I understand the position, in Mysore every one may freely and confidently exercise liberty of speech. But no man, no human being in any human society, can be absolutely free. There must be some restrictions everywhere on liberty of speech as upon liberty of action. In regard to private individuals a man cannot with impunity in many circumstances defame his neighbour or slander him or publish a libel regarding him; and here in Mysore as elsewhere a man is not permitted in the exercise of liberty of speech to commit an offence or to incite others to an offence or to rebellion or treason or sedition or a breach of the public peace or by making a speech in a public place

to obstruct traffic. Those, as the learned Government Advocate has suggested, are restrictions upon liberty of speech which will be found in the freest of countries. In this case we are concerned with the restriction which is placed upon liberty of speech by Section 124-A of the Penal Code. Some people perhaps think that the provisions of that section are very severe. But, as the learned Government Advocate remarked to-day, in effect they are copied almost exactly from the law of England, and England is generally regarded as a free country, where every one enjoys liberty of speech.

The question before us is -- does the evidence show that the Accused committed an offence within the meaning of Section 124-A of the Penal Code. It is proved that he made the speech recorded in Exhibit P-2 and Exhibit P-3(a) at a meeting at Dodballapur called to sympathise with a friend of his called Siddalingiah, who it appears holds the same political views as the Accused and who had been arrested on account of some speech which he had made. The evidence shows that the Accused at that meeting made a speech which expressed a protest against his friend's arrest and sympathy with him, which criticised the Government's administration, which represented that taxation in Mysore was very high

and that there was a great deal of expenditure on unnecessary salaries, that a grave mistake was made by the Government in raising excise revenue, that it would be a very good thing for Mysore if prohibition of intoxicating drink was made the law in Mysore and which urged that responsible government would be a panacea for all troubles in this State. Apart from the impropriety of discussing a case which was then before a Magistrate the Accused like any one else was perfectly at liberty to make a speech on those topics and to express his views regarding them. The most important subjects of the speech I think, if we read it through, are the protest against the arrest of his friend, Siddalingiah, and his advocacy of responsible government, as he calls it. But, if we are to find whether in that speech the Accused committed an offence punishable under Section 124-A of the Penal Code, we must examine it in more detail. When we do so, it appears to me in many respects a very deplorable speech for an educated man to have made. At the beginning the Accused speaks of his friend, Siddalingiah, as having sacrificed his life for the benefit of the public, which was language of silly exaggeration. Then he went on to speak of himself as a leader who worked for the benefit of the people and sacrificed his life to eradicate poverty from the country

and to get responsible government. That was still more silly and egotistical exaggeration. A little further on he quoted as something which his friend, Siddalingiah, had told him: "how Government squeeze the blood (of the poor) and collect taxes from them", which statement is followed immediately by the sentence "Our officers are enjoying luxurious life at the cost of the poor ryots", implying clearly I think that these officers are supported by the life-blood of the ryots. The same idea that Government is taking money from the poor in order to keep their officers in luxury is expressed a little further on in the speech when he refers to Government wanting to have the poor man's money in the treasury and to pay fat salaries to officers with it. I think it is obvious that is not only exaggerated language but vulgar language for a man in the Accused's position to use. If any one were to get up and say that members of the honourable profession to which the Accused belongs ~~xxxx~~ suck the blood of their clients and so live in luxury on fat fees, we should all be disgusted. It is no less disgusting to use similar language ~~above~~ about the Government. As the learned Government Advo~~xxx~~cate has suggested, in this part of his speech the Accused was not even

honest in what he said and could not possibly have believed in what he said in such disgusting and exaggerated language. It is possible for any one to hold the view, if he thinks fit, that taxation in this State is unnecessarily heavy and to express that opinion to other people. He is quite at liberty to do so. He may also think that such money as is raised in taxes is not spent in the wisest way and that he can suggest better ways of spending it or more economical ways. A man is quite at liberty to express such opinions as that and to advocate them by speech in order to persuade other people that they are right. He is at liberty to say, if he wishes, that he thinks that all the necessary activities of a modern Government could be carried out at much less expense, and so far less taxes need be raised from the people. Other persons may not agree with those views; but they are quite legitimate views, and there is no legal objection to anybody putting those views forward and urging them upon other people. Perhaps we might expect any educated man before propounding those views in a violent way to consider a few facts which we all know. He might perhaps remember that this is a State of which the population is now

about 7 millions and that the total revenue of the State is something less than 3 millions sterling. He might remember perhaps that out of that revenue, as we all know, a large part could not be described as coming from taxation in any sense, and a much larger part would not be regarded in a great many countries as coming from taxation; but, including the whole revenue, it does not reach 3 millions sterling a year. Perhaps it might be suggested to any one who wanted to consider this question fairly that he should search through the world for any country with a population such as that of Mysore in which administration was conducted on modern lines and more was done for the people and for developing the resources of the country for the benefit of the people on so small a revenue. I think he would search in vain. Nevertheless, small as the revenue of this State is and much as is done with it, it is quite open to any man to think that he could do better in administering the State with less money and to advocate such views. But we may well ask whether an educated man could really believe that the Government of this State squeezes the life-blood of the ryots not for any good purpose, not for the benefit of the State or the people of

the State, but for the purpose of providing fat salaries for the small class of persons who are Government officers. And we may well doubt whether a man of education could really believe that the salaries of Government Officers in this State could be described as fat or providing luxurious living. As was mentioned in the course of the arguments in this case, it was announced quite recently that the Government of a neighbouring province -- a Government for which the Accused has expressed great admiration, being conducted by persons of political views with which he sympathizes -- has fixed new and reduced rates of pay for the Government officers of that province. Those reduced rates of pay are considerably higher than the rates of pay drawn by officers of this State on the whole. The learned Government Advocate has asked, can the Accused in using violent and vulgar language in this part of his speech really have been expressing an honest opinion. I think it is a question which may well be asked. Then a little later in the speech the Accused went on to suggest that Government officers should come forward and set an example by helping the poor in getting education, medical relief and improving sanitation in the villages,

the suggestion being, I think, as the learned Government Advocate has urged, that Government officers are not interesting themselves in those things -- a suggestion which can hardly be regarded as anything but untruthful and mean-spirited. Then the speech goes on to refer to Siddalingiah having been arrested. The Accused says: "Mr. Siddalingiah visited the villages and explained to the people the real situation of our country, the revenue of the Government and how the Government spend that amount. Is it wrong? It is for that purpose he is to-day in jail. It is for this he was asked to furnish surety and security by the Magistrate in Bangalore City". Mr. Raju has not been able to suggest any reasonable explanation of that statement. Obviously it cannot be true. No Magistrate could require a man to give security for explaining to people information which the Government places at the disposal of the public. The facts about the revenue and expenditure of this State are not hidden. That was clearly a misrepresentation, as the Accused must have known: it was a deliberately untruthful misrepresentation. Then a little further on he said "There is repression everywhere in the State against truth.

If anybody speaks truth he will be asked to furnish security and surety by the Government". Again Mr. Raju has not been able to suggest any explanation of that statement, which on the face of it is false. It is impossible I think to suggest that the Accused can have believed that he was stating the truth when he said that. A little further on he said discussing excise revenue: "Annas four a day earned by a poor man is snatched away by the Government on his way in the toddy and arrack shops". Then comes a passage which I will omit from consideration as some dispute ~~was~~ has been raised about it. And after a little the speech goes on "They want to have the poor man's money in the Treasury and pay fat salaries to the officers. Government themselves make people to drink by having these shops". Now there again it is open to any man to have his own views in regard to the wisdon of raising revenue under the name of excise from the use of intoxicating liquors. The speech goes ~~i~~ on to advocate prohibition of the sale of all intoxicating liquors. Many people believe that that would be a good measure and honestly believe it; and they are quite entitled to advocate it. They are quite entitled, if they think fit, to

go further and say that in their opinion no Government should raise revenue by taxing or licensing the use of intoxicating liquors and go further still and say that it would be wise for the Government of this State to make ~~it~~ a law that no one should be allowed to consume intoxicating liquors. All that is quite legitimate, and a man may advocate those views and try to persuade other people to those views. Other people may disagree with him. They may think it is not right to restrict the liberty of one's fellow-men in that respect. They may think that it is wiser to control the use of intoxicants by licensing and taxation. In this State we have an Excise Act, which ~~gi~~ gives the Government power to control the sale of intoxicants. People are not left entirely free in that matter. Many earnest temperance workers in other parts of the world would be only too glad to see a system ~~w~~ such as there is here in Mysore in force in their own countries, so that the sale of intoxicants ~~should~~ should be controlled and restricted but as much of the profits made from the sale of them as possible should go, not into private pockets but into the funds of the State, to be used for the public good. People may advocate legitimately one

view or the other. But is it reasonable or honest to represent the Government of this State as purposely inducing people to use intoxicants in order that the poor man's money may be snatched away from him and used, not for the good of the public, but to pay fat salaries to Government officers? Is that an honest way of advocating a Ban policy? Later on in his speech the Accused said a very objectionable thing, as the learned Government Advocate has urged. He said: "Show me a person who is not committing any mistake in life. If we poor people were to do that, we would be punished. If high class people were to do it, it will not come to light". I do not know what the Accused meant by referring to himself as a poor person, and Mr. Raju has not been able to explain it. But the suggestion is that the law is enforced against the poor and not against the rich. That is a very serious suggestion indeed; but I do not think we could legitimately say that the Accused must have meant in making that objectionable statement that the Government were responsible for that state of affairs. Then towards the end of the speech the Accused incited the people at the meeting to agitate for the release of his

friend, Siddalingiah. He said: "All the people should cry at a time for the release of Siddalingiah and ask Government whether they are prepared to release him or not". I am astonished at a member of the Bar trying to raise clamour in regard to a case which was then before a Magistrate. That was very discreditable to him, and, so far as I can see, entirely unjustifiable; but it does not appear to me to come within the provisions of Section 124-A of the Penal Code.

There is a great deal which may be said against that speech. In part I think it may properly be described as vulgar, self-praising, self-advertising, mean-spirited, malicious, and, I am sorry to say, lying; and the lies in it are the more contemptible because in that very speech the Accused was posing as a ~~cheap~~ champion of truth. But a man may be vulgar, conceited, self-advertising, malicious, untruthful and yet not come within the provisions of Section 124-A of the Penal Code. If he makes a speech to which those epithets can properly be applied but does not offend against the provisions of that section of the Penal Code, then he must be left to the punishment of his own

conscience. If the Accused is, as I hope he is, at bottom an honest man, I cannot doubt that he is now heartily ashamed of many parts of that speech. But it was the case of the prosecution that that speech was not only deplorable and indeed a disgusting speech in some ways for an educated man to make, but it did transgress the limits of liberty of speech imposed by Section 124 A of the Penal Code, and the Accused was liable to punishment on that account. Some of the passages I have mentioned in this speech I think do come within the provisions of that section. What could the Accused's object have been in representing the Government as squeezing the blood of the ryots in order to provide fat salaries for Government Officers unless he wished to bring the Government into hatred and contempt? We should all hate a Government which was really animated by that object and behaved in that way. When he represented falsely, as cannot be disputed, that his friend, Siddalingiah, was being prosecuted merely for giving information to the public which is open to any one, what did he intend? What could he have intended except to excite ill-feeling against the Government? And, when he went on to make the outrageously false statement that in Mysore, "if anybody speaks truth, he will be asked to furnish security and surety by the Government",

what was the meaning of that? It was obviously a lie and a lie introduced in order to rouse ill-feeling and rancour against the Government. What other object could any educated man have in making a lying statement such as that? When he spoke of the Government's excise policy in the language I have quoted, perhaps his intention is not so clear. It may have been that he was using very exaggerated language. But it is very difficult to believe that he was honest in what he said. It was a gross misrepresentation of what he must have known is the Government's policy. It was really, like the first passage I have quoted about squeezing the blood of the ryots, more abuse than argument. But let us confine ourselves only to the two passages about squeezing the blood of the ryots and demanding security from any one who tells the truth. What explanation can there be of them? Those statements must have been introduced in order to rouse rancour against the Government.

Mr.Raju has asked us to consider the whole speech recorded in Exhibit P.2 and Exhibit P.3(a) and not isolated passages. I do not think that that method of looking at the matter will in this case be of much advantage to the Accused. As I have mentioned, if we take his speech as a whole, though there are considerable parts of it to which no objection could be taken and no objection has been taken by the learned Government Advocate-- its main objects were to rouse sympathy for his

friend, Siddalingiah, and against the Government and to persuade his hearers that what he called responsible Government would be a panacea for all troubles in Mysore. Not only did the passages of this speech which offend against the provisions of Section 124 A of the Penal Code not come as isolated passages but all come more or less together in the earlier part of the speech; they obviously fit in with those two objects of the speech, to blacken the Government in the opinion of his hearers in order to rouse their sympathy with his friend Siddalingiah and to persuade them that what he calls responsible government would be so much better; and the statements which are made in those passages are statements which, so far as I can see, in the mouth of an educated man could have no other object at the time than to rouse ill-feeling and bring the Government into hatred and contempt. A Government which could rightly be described as the Accused has described this Government would be a hateful Government to all of us.

The Accused offered no explanation of those passages. Indeed he said he stood by them all. He expressed no regret for them. At one stage in his argument Mr. Raju suggested that the learned Magistrate had made a mistake in using what the Accused said in his written statement to which I have referred as making clearer his intention in the objectionable passages of his speech as recorded in

Exhibits P.2 and P.3(a). The learned Government Advocate has urged that the Magistrate was justified under the provisions of Section 342 of the Code of Criminal Procedure in using the Accused's written statement in that way and in taking it into consideration as throwing light upon the speech which he made at Dodballapur on the 7th of October. I think it is quite clear that, if an accused person, when examined under Section 342 of the Code, gives an explanation which is in effect an admission of the prosecution evidence, it can certainly be used. But I am not persuaded that the Code allows any heightened effect to be given to prosecution evidence by what an accused person says in his statement under Section 342 of the Code. However, I do not think it is necessary to discuss that question on this occasion or to express a final opinion upon it as it is quite clear from his judgment that the learned Magistrate had come to the conclusion that the Accused was guilty of an offence punishable under Section 124 A of the Penal Code without making any use of the Accused's written statement and before he started to discuss that written statement. I do not think we can find any sufficient reason to interfere with the learned Magistrate's conviction of the Accused.

Mr.Raju has urged that the sentence imposed on the Accused is a very severe one.

In my opinion it is a very heavy sentence. Remembering how easy it is for people who hold strong political views in the excitement of a speech to use language of unjustifiable violence and to lose all sense of fairness towards those who differ from them, I think that, if I had been trying this case, it is very probable that, provided the Accused had said that, though he hold to every one of his political opinions, as he is entitled to do, yet he recognized that he had used unjustifiabl language and had transgressed the law and regretted that he had done so, I should have imposed upon him a comparatively lenient sentence. However there appear to me two reasons why it would not be proper for us in these proceedings to interfere with the sentence which has been imposed upon the Accused. He has not chosen to appeal against that sentence; and it is only in very exceptional cases in my opinion that this Court should reduce a sentence, against which an accused person might have appealed but has not appealed on the ground that it is too heavy. Moreover, though I think the learned Magistrate need not have paid any attention to the written statement read out by the Accused at his trial when he was considering the question whether the Accused was guilty or not, it was in my opinion quite proper for him to take that written statement into consideration when he was deciding what sentence would be appropriate to the Accused. I do not wish

how to refer to the trick of the Accused in taking the opportunity of firing off an irrelevant political speech instead of attempting to meet the charge upon which he was being tried. But the contents of his written statement ought certainly to be taken into consideration in connection with his sentence. That written statement contains passages which, as the Accused himself must have very well known, if they had been read out by him anywhere but in Court, would have clearly justified his conviction of the very offence for which he was being tried. Part of that statement was an impudent and insulting attack upon the head of the Government. When a Judge or a Magistrate is trying to estimate what is the proper sentence for an accused person, it is right for him to consider the character of the accused, so far as it has come to his attention, and what he can ascertain from the behaviour and bearing of the accused in Court. If the accused, far from showing any regret for what he has done, is truculent about it, that is a thing which a Magistrate or a Judge should certainly take into consideration in regard to sentence. If an accused person was convicted of stabbing some one, and in the dock he said in effect "I did it and I shall do it again", the Judge or Magistrate would not only be fully justified in imposing upon him a much heavier sentence than he would otherwise have

done but it would be his duty to do so. Now in this particular case the Accused deliberately in the dock in this impudent written statement, which he knew had nothing to do with his defence and which he himself said was not part of his defence, as he did not want to defend himself, was plainly transgressing the law under which he was being prosecuted. That was a deplorable thing for a man of the Accused's profession to do either as a piece of bravado or for any other reason; and I think it quite precludes us from considering whether his sentence should be reduced by this Court. If there is to be any mitigation of the Accused's sentence, in my opinion it should be done otherwise than by this Court.

In my opinion this petition should be dismissed.

Sd/- H.D.C. Reilly,
Chief Justice.

MR. JUSTICE ABDUL GHANI:--

I agree.

Sd/- C.Abdul Ghani,
Judge.

"COPY"

by Registrar.

KSr. HVK.

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IN THE HIGH COURT OF MYSORE AT BANGALORE.

Wednesday, the 9th day of February 1938.

PRESENT

THE HON'BLE SIR D'ARCY REILLY, CHIEF JUSTICE,

and

THE HON'BLE MR. JUSTICE U.ABDUL GHANI.

CRIMINAL REVISION PETITION NO.223/1937-38.

Mr. M.P. Somasekhara Rao, Secretary, Bangalore Law Association, District Office Buildings, Bangalore. ... PETITIONER

(By Mr.L.G. Raju)

v.

The Government of Mysore ... OPPONENT.

(By the Government Advocate)

Criminal Revision Petition, filed under Sections 435 and 439 of the Code of Criminal Procedure, in accordance with the resolution passed on 9-12-1937 by the Law Association of Bangalore, is for setting aside the conviction and sentence under Section 124-A, Indian Penal Code passed on Mr.H.C. Chimma Reddi - accused in Criminal Case No. 403 of 1937-38 on the file of the City Magistrate of Bangalore.

This petition coming on for hearing this day before a Bench (as ordered by the Admission Judge on 19-1-1938), the Court delivered the following:-

JUDGMENT.

Cr.R.P. 223/37-38.

J U D G M E N T.

THE CHIEF JUSTICE :-

In this case the Accused, who is a Plender, was convicted by the City Magistrate of Bangalore on the 8th of November last of having committed an offence punishable under Section 124-A of the Penal Code by making a speech at Godbellapur on the 7th of October, and for that offence the Magistrate sentenced him to undergo rigorous imprisonment for 18 months and to pay a fine of Rs 1000/- or in default to undergo further imprisonment for three months. The Accused has not appealed against his conviction or sentence. But a third party has brought his case to the notice of this Court by a petition, and that is the petition with which we are now dealing. My learned brother as admission Judge ~~made~~ referred the case for hearing and consideration in revision by a Bench. In a somewhat similar case yesterday I discussed the question of the High Court taking up cases on revision at the instance of a third party, when the accused himself has not chosen to appeal, though he might have appealed against his conviction or sentence, and I need say no more on that subject now.

The speech which the Accused was alleged to have made is recorded in Exhibit P-2 and evidence was given -- evidence which he did not

not dispute at the trial -- that he made that speech. The learned Magistrate found that the speech established the charge which he had framed against the accused to the effect that he had brought and attempted to bring into hatred or contempt and excited or attempted to excite disaffection towards His Highness the Maharaja of Mysore and towards the Government established by law in the territories of His Highness the Maharaja.

The accused did not cross-examine any of the witnesses for the prosecution. When he was examined by the Magistrate under Section 342 of the Code of Criminal Procedure, he stated that one part of the report of his speech as recorded in Exhibit P-2, a part of no importance, had not been correctly recorded and gave his version of it. Then he went on "There are similar defects in the rendering but I do not refer to them as I do not wish to plead in the case as dictated by Congress Policy". At the same time the accused put in a long written statement; but we are told that the Magistrate did not allow him to read it out. In that I think the Magistrate was quite right. The statement apart from its opening, in which the accused said again that he did not wish to plead nor did he desire to make any defence but stood by his speech and contended that what was stated in it was not seditious, was in effect nothing but an irrelevant political harangue, which, if it had been delivered anywhere but

in Court, would certainly have brought the accused by some of its passages clearly within the provisions of Section 124-A of the Penal Code. Very strangely it appears that written statement is in the very same words as the written statement read out by the accused in the case with which we were dealing yesterday-- a case in which another lawyer was charged with having committed an offence punishable under Section 124-A of the Penal Code. In the trial of ~~xxx~~ that case, unfortunately and unwisely as I think, the learned Magistrate had allowed the written statement -- i.e. a written statement in exactly the same words as the one filed by the accused in this case -- to be read out. I have already expressed my opinion in that case that the accused then ~~x~~ under trial in that case played a disreputable trick upon the Court by producing and reading such a written statement. The accused in the present case was not allowed to succeed in the trick of reading the statement out. If that had been his trick in this case, it would not have been a novel one, and the written statement itself in this case has not even the merit of novelty. He simply adopted what another man had said in another case and put his name to it -- a very curious proceeding for an accused person. Although in his written statement, he did raise a contention that what he had said in his speech on the 7th of October at Madhallapur was not seditious, in his oral statement to the Magistrate, as I have mentioned, he said that he did not wish to plead. Nevertheless, now

that the case has come before us, we must look into the record of his speech -- the speech on which he has been convicted -- and see whether it offends against Section 124-A of the Penal Code.

The Magistrate has found that "the speech as a whole is an attack upon the Government of Mysore as it is constituted and that the natural and necessary consequence of the words employed is to bring the Government into hatred or contempt or to excite disaffection against it as well as against the Ruling House". It has not been contended by the learned Government Advocate, who has supported the Accused's conviction before us, that there is anything in the speech to excite disaffection against the Ruling House. We need not consider that aspect of the Magistrate's finding any further. But, so far as the speech is supposed by the Magistrate to have been intended to bring the Government into hatred or contempt or to excite disaffection against it, I find myself quite unable to agree with the learned Magistrate's view. In his judgment I think he has put a very strained interpretation upon many passages in the Accused's speech. Some people might regard it as in some respects a surprising speech for a man in the Accused's position as a lawyer to have made. But what we have to see is whether there is anything in that speech to bring the Government into hatred or contempt or to cause disaffection against it. A part of the

speech appears to me clearly ridiculous. The accused set out, as I understand him, to urge the benefits of responsible Government; but in some muddle-headed way he landed himself in expressing a desire for the establishment of a dictatorship in this country. How he reconciled those two different aspirations I think it is impossible for us to find out. In the early part of the speech he states that the Members of the Government of Mysore are not easy to approach, as the Ministers of a responsible Government would be. It is not suggested before us that there is any truth in his idea that the Members of the Government of Mysore are not easy to approach. But the accused's statement or suggestion that they are not so could not reasonably have been interpreted as in any way likely to bring them or the Government into hatred or contempt or to excite disaffection with the meaning of the section.

The passage on which the learned Government Advocate has laid most stress in this speech is a very discourteous reference to the Dewan. There is another reference in the speech to the Dewan, which is grossly bad taste; but it cannot strictly be suggested, and it is not suggested by the learned Government Advocate that it comes anywhere within the provisions of Section 124-A of the Penal Code. The passage upon which the learned Government Advocate lays stress is a sentence in which the accused

said "we do not like to have duffers as our Dewan". I what was put in in that indefinite and general way was intended to refer to the present Dewan, it was grossly discourteous. But the suggestion is so plainly absurd that, if the accused meant what it was suggested he meant, I find it practically impossible to believe that any one who heard the accused make this speech could have been influenced by that remark to feel any hatred or contempt towards the Government or disaffection against it, even if for the sake of argument we accept for a moment the learned Government advocate's contention that for the purpose of such a case as this we may treat every reference to the Dewan as a reference to the Government within the meaning of that section. Discourteous reference like that to the Head of the Administration of the State is much more likely to bring the accused himself into contempt than to affect that high officer in any way or any one's opinion regarding him. Apart from that it cannot be suggested that there is anything in this speech, so far as I can see, which comes within the language of Section 124-A of the Penal Code.

It appears there there is evidence to show that the accused made another speech five days after he made the speech with which we are concerned; and, although the learned Magistrate did not discuss that later speech in any detail, his judgment shows that he

allowed the record of what the accused said on that later occasion to influence his view of what the accused intended in the speech with which we are concerned. I do not think that it was legitimate under the provisions of Sections 14 or 15 of the Evidence Act, as the learned Government Advocate has suggested, to make any use of that second speech in interpreting this speech with which we are concerned. A man may make a speech of one colour to-day and a speech of quite a different colour 5 days later. The speech of to-day might be one which would not offend the law in any way. Five days later he might offend the provisions of Sections 124-A -- not that I wish to express any opinion on this occasion whether the accused did offend against the provisions of that section on the second occasion. It is not fair to infer at all from the fact that the accused made a speech transgressing the legal limits of freedom of speech if he did so, on the 12th of October that his speech on the 7th of October, with which we are concerned and which in itself by its wording does not transgress the provisions of that section, should be so read as transgressing the provisions of that section. I think we must leave the second speech, whatever its tenor was, entirely out of consideration.

When the learned Magistrate also made some use of the written statement to which I have referred as throwing light upon the accused's intention when he made his

speech on the 7th of October, with which we are concerned. Though I regard the Accused's filing of that written statement, not his own but somebody else's written statement, as a most extraordinary performance, which does no credit to a man of the Accused's ~~xxxxx~~ position and profession, I do not think it throws any light or could be used properly to throw any light on his speech with which we are concerned in the way of heightening the effect of that speech and making us treat that speech as one which could be held to transgress the provisions of Section 124-A of the Penal Code, if by its plain meaning read by itself it does not transgress those provisions. In my opinion it is quite clear, whatever we may think about the Accused's speech on the 7th of October, there is no evidence in this case to show that by making that speech the Accused committed an offence punishable under Section 124-A of the Penal Code.

That means that the Accused has been wrongly convicted and has been in jail from the 8th of November last under a sentence which should not have been passed upon him. But I do not think we need waste any sympathy upon the Accused. So far as I can see, though the Magistrate has made a mistake in this matter, the Accused has himself to thank almost entirely for that result. Having a perfectly good and obvious defence to the charge against him he behaved like a sulky child and refused to put it forward. Having

been convicted and, as I think, having a most obvious ground of appeal, which would certainly have succeeded, he chose to stay sulkily in jail instead of preferring an appeal. And that is the behaviour of a grown-up man and a lawyer. Such childishness makes one wonder whether in spite of his anxiety for responsible government the accused is fitted for the grave responsibilities of that form of Government. The conclusion of the whole matter in my opinion is that we must set aside the conviction and sentence of the accused and order his release from prison and the refund of the fine to him, if he has paid it; and I propose that that should now be done.

Sd/- H.D.C. Reilly,
CHIEF JUSTICE.

M. JUSTICE A. ABDUL RHANI :-

I agree.

Sd/- A. Abdul Rhani,
JUDGE.

"A (AY"

[signature]
A. Registrar.

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Appendix F G—1]

SUBJECT .....

.....

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Section Law

File No. 134-37

Serial No. 3

Diary No. of letter replied to..... DO No. P 61.77

To

General and Revenue Secretariat

( )

the 193

Date of issue..... 5-5-38

Signed by Mr. BKR.

List of enclosures.....

Copied by .....

Examined by.....

Subject:- Criminal Case Nos 401 and 403/37-38 on the file of the City Magistrate, B Vara (Cases against Messrs K.T. Rajagopala Iyengar and M.V.C. Thimma Reddi

Dear Sir,

With regard to the procedure adopted in the Conduct of the above Cases, I am desired to state that (when the idea was to proceed with one of the cases only, prudence required that the stronger of the two cases should have been selected first and it was a mistake that the weaker case was first proceeded with.

I am also to state for your information and guidance

that an attack against the Dewan is an attack against Govt and therefore amounts to Sedition under Section 124-A IPC. It is no doubt true that Section 17 of the I.P.C defines the word 'Government' as denoting the person or persons authorised by law to administer executive Govt in any part of British India. But Section 1(2) of Act I of 1904 provides that subject to the provisions of that Act, the rule of interpretation contained in Section 31 of the General clauses Act 1899, shall apply to the Indian Penal as in force in Mysore as of the Code had been expressed to be appl mutatis mutandis to Mysore. Accord to the rule of interpretation contained in Section 31(IV) of the General clauses Act, the references to territorial limits in British India (in the IPC) have to be converted into references to Mysore or part thereof as may be denoted by the context. The cumulative effect of these provisions would be that accor

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G. R. S. App. F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*

to Section 17 of the I.P.C. as applie to Mysore, the word 'Governmen denotes the person authorised by law to administer executive Govt in Mysore. The definitio of the word, as given in Sec: 3 (16) of the General claus Act also is that 'Govt shall mean the person authorised to administer executive Govt in Mysore', and that perso is undoubtedly the Dewan

* * *

Yours Sincerely

NO 27/43 D

BNR 26.4

To

J. A. Hamilton Esqr. C.I. D. G. of Police.

Memo

NO. P 6178-85 & S.S.-38

To the Terms of Disc:

* I am also to invite attention to the proclamation by His Highness, the late Chamarajendra Wodeyar Bahadur on 25.3.81 wherein it was announced that 'for the Control of the executive administration of the said Territories under our Command and Order, we have resolved to appoint a Dewan" from which it is clear that the Dewan is 'the person authorized to Administer executive government in Mysore',

DO-No P 6177

Law-184-37-3

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5th ~~2nd~~ May 1938.

Subject:- Criminal cases Nos.401 and 403/37-38 on the file of the City Magistrate, Bangalore - (Cases against Mr. N.C. Thimma Reddy).

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Dear Sir,

With regard to the procedure adopted in the conduct of the above cases, I am desired to state that when the idea was to proceed with one of the cases only, prudence required that the stronger of the two cases should have been selected first and it was a mistake that the weaker case was first proceeded with.

I am also to state for your information and guidance that an attack against the Dewan is an attack against Government and therefore amounts to sedition under Section 124-A, Indian Penal Code. It is no doubt true that Section 17 of the Indian Penal Code defines the word 'Government' as denoting the person or persons authorised by law to administer executive Government in any part of British India. But Section 1 (2) of Act I of 1904 provides that subject to the provisions of that Act, the rule of interpretation contained in Section 31 of the General Clauses Act, 1899, shall apply to the Indian Penal Code as in force in Mysore as if the said Code had been expressed to be applied mutatis mutandis to Mysore. According to the rule of interpretation contained in Section 31 (iv) of the General Clauses Act, the references to territorial limits in British India (in the Indian Penal Code) have to be converted into references to Mysore or a part thereof as may be denoted by the context. The cumulative effect of these provisions would be that according to Section 17 of the Indian Penal Code as applied to Mysore, the word 'Government' denotes the person authorised by law to administer executive Government in Mysore. The definition of the word, as given in Section 3 (16) of the General Clauses Act ~~also~~ is that 'Government shall mean the person authorised to administer executive Government in Mysore', and that person is

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undoubtedly the Dewan.

I am also to invite attention to the proclamation by His Highness the late Chamarajendra Wodeyar Bahadur on 25th March 1881 wherein it was announced that 'for the conduct of the executive administration of the said territories under our commands and control, we have resolved to appoint' a "Dewan" from which it is clear that the Dewan is 'the person authorised to administer executive Government in Mysore.'

Yours sincerely,

To

F.A.Hamilton Esq., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.